



[Billing Code: 6750-01S]

**FEDERAL TRADE COMMISSION**

**16 CFR Part 305**

**RIN: 3084-AB15**

**Energy and Water Use Labeling for Consumer Products Under the Energy Policy and Conservation Act (“Energy Labeling Rule”)**

**AGENCY:** Federal Trade Commission (FTC or Commission).

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Commission seeks comments on labeling for several miscellaneous refrigeration products not covered by existing labeling requirements. The Commission seeks comments on whether labels for these products would assist consumers in their purchasing decisions. Preliminary DOE analysis suggests labeling would benefit consumers and be economically and technologically feasible.

**DATES:** Comments must be received by March 3, 2015.

**ADDRESSES:** Interested parties may file a comment at

<https://ftcpublic.commentworks.com/ftc/miscrefrigerator> online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION**

section below. Write “Miscellaneous Refrigeration Products, Matter No. R611004” on your comment, and file your comment online at

<https://ftcpublic.commentworks.com/ftc/miscrefrigerator> by following the instructions on the

web-based form. If you prefer to file your comment on paper, write “Miscellaneous

Refrigeration Products, Matter No. R611004” on your comment and on the envelope, and mail

your comment to the following address: Federal Trade Commission, Office of the Secretary, 600

Pennsylvania Avenue, NW, Suite CC-5610 (Annex N), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7<sup>th</sup> Street, SW, 5<sup>th</sup> Floor, Suite 5610 (Annex N), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome, (202) 326-2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Commission's Energy Labeling Rule (Rule) (16 CFR Part 305), issued pursuant to the Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6291), requires energy labeling for major household appliances and other consumer products to help consumers compare competing models. The Commission implements its labeling program in conjunction with the Department of Energy's efficiency standards program for consumer products, which is also instituted pursuant to EPCA. When first published in 1979, the Rule applied to eight product categories: refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces. The Commission has since expanded the Rule's coverage to include central air conditioners, heat pumps, plumbing products, lighting products, ceiling fans, certain types of water heaters, and televisions.

The Rule requires manufacturers to attach yellow EnergyGuide labels on many of these products, and prohibits retailers from removing the labels or rendering them illegible. In addition, the Rule directs sellers, including retailers, to post label information on websites and in

paper catalogs from which consumers can order products. EnergyGuide labels for covered products must contain three key disclosures: estimated annual energy cost (for most products); a product's energy consumption or energy efficiency rating as determined based on Department of Energy (DOE) test procedures; and a comparability range displaying the highest and lowest energy costs or efficiency ratings for all similar models. The Rule requires manufacturers to use national average costs for applicable energy sources (*e.g.*, electricity, natural gas, and oil) as calculated by DOE. The Rule sets a five-year schedule for updating comparability ranges and average unit energy cost information.<sup>1</sup> The Commission updates the range information based on manufacturer data submitted pursuant to the Rule's reporting requirements.

## **II. DOE Authority to Add New Covered Products**

EPCA gives DOE authority to add product categories to its energy conservation program beyond those already listed under the statute.<sup>2</sup> DOE may classify additional consumer product types upon a determination that: (1) product coverage is either necessary or appropriate to carry out EPCA's purposes; and (2) the average annual per-household energy use by products of such type is likely to exceed 100 kWh per year.<sup>3</sup>

## **III. DOE Proposed Coverage of Miscellaneous Refrigeration Products**

Pursuant to this authority, DOE recently proposed to cover several types of refrigeration products excluded by existing DOE definitions, including cooled cabinets, non-compressor refrigerators, hybrid refrigerators, compact hybrid refrigerators, hybrid freezers, and residential

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<sup>1</sup> 16 CFR 305.10.

<sup>2</sup> 42 U.S.C. 6292.

<sup>3</sup> 42 U.S.C. 6292(b)(1).

ice makers.<sup>4</sup> In DOE's view, coverage of these products is both necessary and appropriate to carry out EPCA's goals for conserving energy supplies and improving consumer product energy efficiency.<sup>5</sup> DOE proposed to consolidate these various product groups into a single, new refrigeration product type distinct from the existing product type that includes refrigerators, refrigerator-freezers, and freezers.<sup>6</sup> DOE concluded that minimum efficiency standards for these products should lead to efficiency improvements. Table 1 contains detailed information from DOE about the products included in the new proposed refrigeration category.

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<sup>4</sup> DOE began this rulemaking proceeding in November 2011, when DOE proposed to add non-compression-equipped residential refrigerators to the list of products covered by its conservation programs. 76 FR 69147 (Nov. 8, 2011). On February 13, 2012, DOE published an additional notice discussing potential energy conservation standards and test procedures for other refrigeration products not currently covered by DOE requirements. 77 FR 7547 (Feb. 13, 2012). Late last year, DOE issued a formal proposal to cover the new types of refrigeration products (78 FR 65223, Oct. 31, 2013). On December 16, 2014 (79 FR 74894), DOE published proposed test procedures for these products. In that test procedure notice, DOE clarified the scope of the products to include those listed above.

<sup>5</sup> 78 FR 65223, 65224 (citing 42 U.S.C. 6201).

<sup>6</sup> *Id.*

**Table 1 - DOE Energy Estimates for Miscellaneous Refrigeration Products<sup>7</sup>**

	<b>Estimated Annual kWh</b>	<b>Estimated Annual Cost (12¢/kWh)</b>	<b>National Stock Estimate</b>	<b>Estimated Lifetime in Years</b>	<b>Annual Sales in Units</b>	<b>Range of Energy Use (per year)</b>
<b>Cooled Cabinets</b>	336	\$40	12,300,000	4.3	2,900,000	104 to 803 kWh
<b>Non-Compressor Refrigerators</b>	669	\$80	4,900,000	4.3	1,100,000	451 to 832 kWh
<b>Hybrid Refrigerators</b>	516	\$62	2,200,000	17	130,000	No estimate
<b>Compact Hybrid Refrigerators</b>	429	\$51	1,400,000	5.6	250,000	365 to 445 kWh
<b>Hybrid Freezers</b>	413	\$50	900,000	22	40,000	No estimate
<b>Residential Ice Makers</b>	363	\$44	5,500,000	1.7	3,200,000	89 to 1075 kWh

#### **IV. FTC Proposed Labeling**

In conjunction with DOE’s proposal, the Commission seeks comments on proposed labeling requirements. Under EPCA, the Commission has discretion to require labeling for new covered products designated by DOE if it determines such labeling will likely assist consumers in making purchasing decisions and be economically and technologically feasible.<sup>8</sup> Although

<sup>7</sup> See 78 FR at 65224-65228, 79 FR 74894, and DOE’s “Preliminary Technical Support Document” at <http://www.regulations.gov/#/documentDetail;D=EERE-2011-BT-STD-0043-0024>.

<sup>8</sup> 42 U.S.C. 6294(a)(3)&(b)(3).

this labeling authority is discretionary, EPCA directs the Commission to publish a proposed rule 30 days after DOE issues a proposed test procedure.<sup>9</sup>

Thus, the Commission now seeks comments on whether labels for these products would assist consumers in their purchasing decisions. Preliminary DOE analysis suggests labeling would benefit consumers and be economically and technologically feasible. According to DOE, the various types of refrigerators under consideration are available to residential consumers in stores and online, and use a significant amount of energy. Moreover, DOE's estimates suggest that competing models for most of these product categories exhibit variable amounts of energy use.<sup>10</sup> In addition, because these products resemble refrigerators already covered by the Rule (16 CFR 305.11), labeling is likely to be economically or technologically feasible.

The Commission has not proposed specific rule amendments in this Notice. However, should the Commission determine labeling is appropriate, any final requirements will likely resemble those applicable to currently covered refrigeration products, including requirements relating to testing (section 305.5), EnergyGuide labeling (section 305.11), recordkeeping (section 305.21), reporting (section 305.8), and catalog/website disclosures (section 305.20). Accordingly, the Commission seeks comments on the application of these existing labeling requirements to the new refrigerator products. The Commission seeks comments on all aspects of this proposal. In particular, the Commission requests that commenters address the following

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<sup>9</sup> See 42 U.S.C. 6294(b)(1)(B) (labeling for new products DOE designates pursuant to 42 U.S.C. 6292(b)). EPCA also grants the Commission authority to require labeling or other disclosures for any consumer product not specified in the statute or designated by DOE if the Commission determines that "labeling for the product is likely to assist consumers in making decisions." 42 U.S.C. 6294(a)(6).

questions:

a. *Benefits*: Should the Commission require labeling or other energy disclosures for the miscellaneous refrigeration products described in this notice? Would labeling or other energy disclosures assist consumers in making purchasing decisions? What benefits, if any, would labeling or other energy disclosures for the products in question provide for consumers and businesses (including small businesses)? Would labeling promote the introduction of more energy-efficient products? What are the potential energy savings for consumers?

b. *Costs*: Is there any evidence that labeling or other energy disclosures for these products would not assist consumers in making purchasing decisions? Would labeling for these products be economically feasible? Would it be technologically feasible? What are the costs of testing these products? What costs would such labeling or other energy disclosures impose on consumers and businesses (including small businesses)?

c. *Energy Use Data*: Is there energy use data regarding these refrigeration products beyond the information already provided by DOE? If so, is there data that shows a significant difference in the energy use of competing models? If so, is there a significant difference in the energy use of such models? What are the annual energy costs of these products?

d. *Format, Content, and Placement*: If the Commission considers labeling or other energy disclosures for one or more of these products, what should the format, content, and placement be of such information? Should the labeling requirements for these products differ in any significant way from the EnergyGuide labels currently applicable to refrigerators, refrigerator-freezers, and freezers? How do consumers purchase these products (*e.g.*, in stores,

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<sup>10</sup> 78 FR at 65224-65228.

online, or otherwise)? Are consumers likely to see the label for these products before purchase? Should disclosures appear on the products themselves, on packaging, in other point-of-purchase material, or through some other means?

e. *Internet and Catalog Disclosures*: Should internet and other catalog disclosures for these products be any different than those for other covered products, such as refrigerators already covered by the Rule?

f. *Content*: If labeling or other energy disclosures should be required, what types of information should such labels include? Should labeling provide the same information as the EnergyGuide label for other refrigerators (*i.e.*, yearly operating costs, energy use, and comparative information)? Should the label require something different or additional?

## **V. Request for Comments**

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 3, 2015. Write “Miscellaneous Refrigeration Products, Matter No. R611004” on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>.

As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card

number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which is . . . privileged or confidential,” as discussed in § 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/miscrefrigeration>, by following the instruction on the web-based form. If this Notice appears at <http://www.regulations.gov>, you also may file a comment through that website.

If you file your comment on paper, write “Miscellaneous Refrigeration Products, Matter No. R611004” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex N), Washington, DC 20580, or deliver your comment to the following

address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex N), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this NPRM and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 3, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

By direction of the Commission.

Janice Podoll Frankle  
Acting Secretary.

[FR Doc. 2014-30572 Filed 12/30/2014 at 8:45 am; Publication Date: 12/31/2014]